

Message

From: Susie McKenzie **Ex. 6 Personal Privacy (PP)**
Sent: 10/5/2022 2:37:21 AM
To: Przyborski, Jay [Przyborski.Jay@epa.gov]
CC: Johnson, Ken-E [Johnson.Ken-E@epa.gov]; Pham, Lisa [Pham.Lisa@epa.gov]; Gillespie, David [Gillespie.David@epa.gov]; Maples, Brandon [Maples.Brandon@epa.gov]
Subject: Re: Class VI Primacy question

Jay,
Yes, thank you. You answered my questions and I really appreciate your providing the instructive regs and noting the terminology differences. Now that you've explained it, everything makes more sense.

Thanks again,
Susie

Susie McKenzie

Ex. 6 Personal Privacy (PP)

On Oct 4, 2022, at 7:36 PM, Przyborski, Jay <Przyborski.Jay@epa.gov> wrote:

Susie,

I've read through the email chain, and I understand your main question (given the citations you provide) is whether tribes can apply for the Class VI program under 1425, meaning they merely need to show their program is "effective." I understand your confusion stems from the phrase "and/or 1425" in 40 CFR 145.58(b) and from 40 CFR 145.56.

I would like to point out a few instructive references that apply to your question. First, note that 40 CFR 145.56 pertains to applications for *eligibility to apply*, not to primacy applications. Also, note that the definition of "State" in 40 CFR 144.3 includes tribes treated as a state. In addition, SDWA 1451(b)(2) provides that tribes may not assume primacy in a manner less protective than in the manner a state would assume primacy.

You may find it helpful to look at the rule preamble, which states that the Class VI program is established under 1422: <https://www.govinfo.gov/content/pkg/FR-2010-12-10/pdf/2010-29954.pdf> (see the discussion at 77241). The preamble goes on to discuss independent application for Class VI under 1422. Also note the footnote on 77235 reiterating that "State" includes tribes treated as a State (40 CFR 144.3). There is no indication that tribes may implement the Class VI program in a manner less stringent than state or federal programs.

Does this answer your questions?
Jay

From: Johnson, Ken-E <Johnson.Ken-E@epa.gov>
Sent: Tuesday, October 4, 2022 10:36 AM
To: Pham, Lisa <Pham.Lisa@epa.gov>; Przyborski, Jay <Przyborski.Jay@epa.gov>; Gillespie, David

<Gillespie.David@epa.gov>

Cc: Maples, Brandon <Maples.Brandon@epa.gov>; Susie McKenzie (Ex. 6 Personal Privacy (PP))

Ex. 6 Personal Privacy (PP)

Subject: FW: Class VI Primacy question

Jay/Lisa/David – We have a regulatory process inquiry to Brandon from a former UIC section member who is now working for a research group, Susie McKenzie, about tribal primacy and Class VI primacy as it relates to 40 CFR 145.1 and SDWA sections 1422, 1425, and 1451. Is it possible for one of you to answer her questions?

Ken Johnson, PE
R6 Ground Water/UIC Section Supervisor
214-665-8473 (office)
Mail to: EPA Region 6
1201 Elm Street, MC 6WDDG
Suite 500
Dallas, TX 75270

Hybrid schedule – telework M, Th, and Fri and office Tues and Wed

R6 UIC Program: <https://www.epa.gov/uic/underground-injection-control-epa-region-6-ar-la-nm-ok-and-tx>

Class I hazardous injection wells: <https://www.epa.gov/uic/guidelines-completing-class-i-injection-well-no-migration-petitions>

Class VI injection wells: https://www.epa.gov/uic/class-vi-wells-used-geologic-sequestration-carbon-dioxide#Gui_docs

Induced Seismicity: <https://www.epa.gov/sites/production/files/2015-08/documents/induced-seismicity-201502.pdf>

Ken

From: Maples, Brandon <Maples.Brandon@epa.gov>

Sent: Tuesday, October 4, 2022 10:01 AM

To: Johnson, Ken-E <Johnson.Ken-E@epa.gov>

Subject: FW: Class VI Primacy question

This is out of my league. Can Lisa answer this? Or send to Jay?

From: Susie McKenzie (Ex. 6 Personal Privacy (PP))

Sent: Tuesday, October 4, 2022 9:57 AM

To: Maples, Brandon <Maples.Brandon@epa.gov>

Cc: Johnson, Ken-E <Johnson.Ken-E@epa.gov>

Subject: Fwd: Class VI Primacy question

Brandon,

Further reading related to my questions. I'm still confused as to whether primacy can be granted to a tribe under 1425 for Class VI primacy, but the reference below reference §145.1(h) that notes all requirements of parts 124, 144, 145, and 146 have to be met so that would include have some tribal statutes in place addressing all the Class VI permitting requirements.

From (<https://www.epa.gov/enforcement/safe-drinking-water-act-sdwa-and-federal-facilities>)

SDWA subsection 1422(e), 42 U.S.C. §300h-1(e) provides for an American Indian Tribe to assume primary enforcement responsibility for an underground injection control (UIC) program if the tribe complies with the applicable requirements. Until a tribe assumes primary enforcement responsibility, the currently applicable UIC program shall continue to apply.

Under section 1451 of the SDWA and 40 CFR part 145, Subpart E, EPA is authorized to treat Indian Tribes similarly to States and may approve Tribal UIC programs. Tribes may apply for primacy under either or both sections 1422 and 1425 of the SDWA, and the references in 40 CFR part 145 and EPA's May 19, 1981 interim guidance to "State" programs are also construed to include eligible "Tribal" programs. (See 40 CFR 145.1(h), which provides that all requirements of parts 124, 144, 145, and 146 that apply to States with UIC primacy also apply to Indian Tribes except where specifically noted.)

Susie

----- Forwarded message -----

From: **Susie McKenzie** Ex. 6 Personal Privacy (PP)

Date: Mon, Oct 3, 2022 at 7:17 PM

Subject: Class VI Primacy question

To: Maples, Brandon <maples.brandon@epa.gov>

Cc: Johnson, Ken-E <johnson.ken-e@epa.gov>

Brandon,

I have more questions! If I read the Class VI regulations correctly, Class VI wells must be permitted and not authorized by rule. I interpreted that to mean that SDWA Section 1422 and not Section 1425 would have to be satisfied.

Assumption:

If an Indian Tribe 1) met the Tribal eligibility requirements of §145.52 and 2) submitted a request to EPA for §145.56 for a determination of eligibility and was determined that EPA was authorized to treat that Indian tribe in the same manner as states for enforcement of the Class VI UIC program.

Questions:

1. Am I wrong in my interpretation that State primacy for Class VI wells was through SWDA Section 1422 and not Section 1425?
2. Could a Tribe that met the requirements of §145.56 get primacy of Class VI wells under Section 1425? §145.58(b) listed below seems to suggest that is the case.
§145.52(d) and §145.56(d) only require the tribe to administer an "effective" UIC program like 1425, not an "equivalent" program as required in 1422.
3. There isn't a §145.76(c) and (d)(6)) as implied in §145.56(f). What is it referencing?
4. Which of the three regulations associated with Tribes sets out all the criteria the States have to satisfy to obtain primacy? Is it implied at the end of §145.56(f)?

§145.52 Requirements for Tribal eligibility.

§145.52(d) The Indian Tribe is reasonably expected to be capable, in the Administrator's judgment, of administering (in a manner consistent with the terms and purposes of the Act and all applicable regulations) an **effective** Underground Injection Control Program.

§145.56 Request by an Indian Tribe for a determination of eligibility.

§145.56(d) A narrative statement describing the capability of the Indian Tribe to administer an **effective** Underground Injection Control program which should include: (1-6)

§145.56(f) If the Administrator has previously determined that a Tribe has met the prerequisites that make it eligible to assume a role similar to that of a State as provided by statute under the Safe Drinking Water Act, the Clean Water Act, or the Clean Air Act, then that Tribe need provide only that information unique to the Underground Injection Control program (**§145.76(c) and (d)(6)**).

§145.58 Procedure for processing an Indian Tribe's application.

(a) The Administrator shall process a completed application of an Indian Tribe in a timely manner. He shall promptly notify the Indian Tribe of receipt of the application.

(b) A tribe that meets the requirements of §145.52 is eligible to apply for development grants and primary enforcement responsibility for an Underground Injection Control program and the associated funding under section 1443(b) of the Act and primary enforcement responsibility for the Underground Injection Control Program **under sections 1422 and/or 1425 of the Act.**

Thanks,
Susie

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Susie McKenzie

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Susie

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